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18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 (SAN FRANCISCO DIVISION)

21 IN RE: CATHODE RAY TUBE (CRT)
22 ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

23 This Document Relates to:

24 *P.C. Richard & Son Long Island Corp., et al.*
25 *v. Hitachi, Ltd., et al.*, No. 12-cv-02648;

26 *P.C. Richard & Son Long Island Corp., et al.*
27 *v. Technicolor SA, et al.*, No. 13-cv-05725;

**DEFENDANTS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT WITH RESPECT TO
MARTA**

ORAL ARGUMENT REQUESTED

Date: February 6, 2015
Time: 10:00 a.m.
Before: Hon. Samuel Conti

UNREDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

DEFENDANTS' NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA
Case No. 07-5944 SC
MDL No. 1917

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1 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3
4 PLEASE TAKE NOTICE THAT on February 6, 2015, or as soon thereafter as this
5 matter may be heard before the Honorable Samuel Conti, Senior District Judge in the United
6 States District Court for the Northern District of California, San Francisco Division, 450
7 Golden Gate Avenue, San Francisco, California 94102, the undersigned defendants in this
8 action will and hereby do move this Court for summary judgment pursuant to Rule 56 of the
9 Federal Rules of Civil Procedure with respect to all claims asserted by plaintiff, MARTA
10 Cooperative of America, Inc. ("MARTA").

11 This motion is based upon this Notice of Motion and Motion, the accompanying
12 Memorandum of Points and Authorities in support thereof, the declaration of Lucius B. Lau,
13 the pleadings and correspondence on file with the Court, and such arguments and authorities
14 as may be presented at or before the hearing.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. ISSUES PRESENTED**

4 1. Whether the Court should grant summary judgment with respect to MARTA's

5 First Claim for Relief (Violation of Section 1 of the Sherman Act) because MARTA lacks

6 antitrust standing.

7 2. Whether the Court should grant summary judgment with respect to MARTA's

8 Second Claim for Relief (Violation of State Antitrust Laws) because MARTA lacks antitrust

9 standing pursuant to the laws of Arizona and Illinois.

10 3. Whether the Court should grant summary judgment with respect to MARTA's

11 First Claim for Relief (Violation of Section 1 of the Sherman Act) because that claim is barred

12 by the customer control exception of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

13 **II. INTRODUCTION**

14 MARTA is a buying cooperative whose [REDACTED]

15 [REDACTED] MARTA was [REDACTED] owned and controlled by its

16 members. Although MARTA nominally [REDACTED]

17 [REDACTED] MARTA was, in reality, simply a

18 conduit between the vendors and the members. MARTA was never harmed by any alleged

19 conspiracy because [REDACTED]

20 [REDACTED]

21 [REDACTED]. Thus, MARTA actually benefitted from any alleged conspiracy

22 because [REDACTED]

23 [REDACTED]. Given these facts, there are

24 different arguments as to why MARTA's case should be dismissed, but these different

25 arguments all lead to one inescapable conclusion: MARTA is not the proper plaintiff to bring

26 this case. Rather, this is a case that should have been brought by MARTA's members.

27 1. MARTA lacks antitrust standing to pursue its Sherman Act claims because

28 MARTA did not suffer any antitrust injury. Antitrust injury is a necessary, but not sufficient,

1 element of antitrust standing. The undisputed facts of this case reveal that [REDACTED]

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED].
14 An entity that actually benefits from an alleged overcharge does not suffer antitrust injury.
15 Because MARTA could only benefit from overcharges through [REDACTED],
16 it lacks antitrust standing to assert its Sherman Act claim.

17 2. MARTA also lacks standing to assert the claims it brings under the Arizona
18 Antitrust Act and the Illinois Antitrust Act.

19 This Court has already held that the Arizona Supreme Court would not follow the
20 standing requirements set forth in *Associated General Contractors*. Nonetheless, MARTA
21 does not have standing under the Arizona Antitrust Act because, pursuant to that Act, only a
22 person who has been “injured in his business or property” may bring an action for damages.
23 Ariz. Rev. Stat. § 44-1408(B). MARTA has not been injured by any alleged conspiracy
24 because [REDACTED]

25 [REDACTED]. The fact that MARTA’s members may have been
26 injured through the payment of increased prices does nothing to establish standing for
27
28

1 MARTA — per the Arizona Antitrust Act, a person must have suffered injury to “his business
2 or property,” not some other entity’s business or property.

3 As to the Illinois Antitrust Act, this Court has already indicated that it found no
4 convincing evidence that the Illinois Supreme Court would not apply *Associated General*
5 *Contractors*. Given that the federal standing rules apply to MARTA’s claims under the
6 Illinois Antitrust Act, MARTA’s Illinois claims fail for the same reasons that its federal claim
7 fails.

8 3. MARTA’s federal claim fails for a separate reason: [REDACTED]
9 [REDACTED] and, as a result, MARTA’s claims are barred by the customer
10 control exception to *Illinois Brick*. In circumstances where an indirect purchaser owns or
11 controls the direct purchaser, only the indirect purchaser may assert a claim under the
12 Sherman Act. Here, MARTA was both owned and controlled by its members. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] Through this ownership and control, MARTA’s members
17 dominated, regulated, and commanded MARTA, and had the power and authority to guide
18 and manage that group. *Accord In re ATM Fee Antitrust Litig.*, 686 F.3d 741 at 757. The fact
19 that [REDACTED] provides additional
20 grounds to reach the conclusion that only MARTA’s members (and not MARTA itself) have
21 standing to assert a claim under the Sherman Act. The relationship between MARTA and its
22 members is that of agent and principal, not seller and buyer. It is a long-established rule that
23 only the indirect purchaser has standing if there exists a principal-agent relationship that
24 supersedes market forces.

25 **III. UNDISPUTED MATERIAL FACTS**

26 MARTA filed its action in the Eastern District of New York on November 14, 2011.
27 By its amended complaint, MARTA asserted claims against numerous defendants under the
28

1 Sherman Act, the Arizona Antitrust Act, and the Illinois Antitrust Act. MARTA First Am.
2 Compl. ¶¶ 233-38, 245, 246.

3 During the relevant period, MARTA was a [REDACTED]
4 [REDACTED]. Declaration of Lucius B. Lau, dated November 7, 2014 (“Lau Decl.”),
5 Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043912, “MARTA Overview”). [REDACTED]
6 [REDACTED]. Lau Decl., Ex. B (Dep. Tr.
7 of Robert Thompson at 37:19-22). [REDACTED]

8 [REDACTED].
9 *Id.* at 39:8-11. [REDACTED]
10 [REDACTED] Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043936,
11 “MARTA Overview”). [REDACTED]. Lau Decl.,
12 Ex. B (Dep. Tr. of Robert Thompson at 49:19-21).

13 MARTA was also controlled by its members. [REDACTED]
14 [REDACTED]. *Id.* at
15 40:2-3, 48:9-23; *see also* Lau Decl., Ex. C (CRT-MARTA-0043944 at CRT-MARTA-
16 0043956, “MARTA Cooperative Plan”) (“[REDACTED]
17 [REDACTED]
18 [REDACTED].”). [REDACTED]
19 [REDACTED]. Lau Decl., Ex.
20 B (Dep. Tr. of Robert Thompson at 49:8-15).

21 [REDACTED]
22 [REDACTED]. *See id.*
23 at 41:14-17 (“[REDACTED]
24 [REDACTED].”); Lau Decl.,
25 Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043913, “MARTA Overview”) (“[REDACTED]
26 [REDACTED]
27 [REDACTED].”).

1 [REDACTED]. Lau Decl., Ex. B (Dep. Tr.
2 of Robert Thompson at 46:16-18); *see also* Lau Decl., Ex. A (CRT-MARTA-0043911 at
3 CRT-MARTA-0043913, “MARTA Overview”) [REDACTED]
4 [REDACTED]). It was [REDACTED]
5 [REDACTED] (Lau Decl., Ex. B (Dep. Tr. of Robert Thompson
6 at 46:19-21)) and, as such, [REDACTED]
7 [REDACTED]
8 [REDACTED]. Lau Decl., Ex. D (CRT-MARTA-0000089 at CRT-MARTA-0000096, “MARTA
9 Audited Financial Statements”). [REDACTED]
10 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert
11 Thompson at 47:21-24). [REDACTED]
12 [REDACTED]. *Id.* at 122:3-6.

13 According to its own charter, MARTA [REDACTED]
14 [REDACTED]. Lau Decl., Ex. C (CRT-MARTA-
15 0043944 at CRT-MARTA-0043944, “MARTA Cooperative Plan”); *see also* Lau Decl., Ex. B
16 (Dep. Tr. of Robert Thompson at 83:20-23). [REDACTED]
17 [REDACTED]
18 [REDACTED] Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at
19 41:23-25, 42:5-23); *see also* Lau Decl., Ex. D (CRT-MARTA-0000089 at CRT-MARTA-
20 0000096, “MARTA Audited Financial Statements”) (“[REDACTED]
21 [REDACTED].”). The members, [REDACTED]
22 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at
23 42:1-4).

24 As the principal and the owner, the membership exercised ultimate control over
25 MARTA’s purchasing decisions. The cooperative counts [REDACTED]
26 [REDACTED]. Lau Decl., Ex. A (CRT-MARTA-
27 0043911 at CRT-MARTA-0043929, “MARTA Overview”). This was done in large part
28

1 through [REDACTED]
 2 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 56:20-23). [REDACTED]
 3 [REDACTED]
 4 [REDACTED]. Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043929,
 5 “MARTA Overview”). [REDACTED]
 6 [REDACTED]. *Id.* [REDACTED]
 7 [REDACTED]
 8 [REDACTED]. Lau Decl., Ex. B (Dep. Tr.
 9 of Robert Thompson at 54:3-11). [REDACTED]
 10 [REDACTED]
 11 [REDACTED]. *Id.* at 57:20-24, 58:21-59:3. [REDACTED]
 12 [REDACTED]
 13 [REDACTED] *Id.* at 67:9-12. [REDACTED]
 14 [REDACTED]. *Id.* at 56:24-57:2.
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]. *Id.* at 84:15-85:1. [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]. *Id.* at 67:13-68:21, 69:9-12, 69:20-70:10; *see*
 21 *also* Lau Decl., Ex. E (Dep. Tr. of Aimee Fields at 91:9-92:6). [REDACTED]
 22 [REDACTED]
 23 [REDACTED]. Lau Decl., Ex.
 24 B (Dep. Tr. of Robert Thompson at 86:11-19); *see also* Lau Decl., Ex. E (Dep. Tr. of Aimee
 25 Fields at 82:25-83:4).
 26 [REDACTED]
 27 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 86:20-24). [REDACTED]
 28

[REDACTED]
 [REDACTED]. *Id.* at 87:15-22, 88:7-10. [REDACTED]
 [REDACTED]. *Id.* at
 60:11-14; *see also* Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043933,
 “MARTA Overview”). [REDACTED]
 [REDACTED]. Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043933,
 “MARTA Overview”); *see also* Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 60:16-18).
 [REDACTED]
 [REDACTED]. Lau Decl., Ex. B (Dep.
 Tr. of Robert Thompson at 110:18-25). [REDACTED]
 [REDACTED]. Lau Decl., Ex. C (CRT-MARTA-0043944 at CRT-
 MARTA-0043944, “MARTA Cooperative Plan”) (“[REDACTED]”)
 [REDACTED]”)
 (emphasis added).
 [REDACTED]
 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 88:17-89:4). [REDACTED]
 [REDACTED]
 [REDACTED]. *Id.* at 100:5-12. [REDACTED]
 [REDACTED]. *See, e.g.*, Lau Decl., Ex. F (CRT-MARTA-0005185
 at CRT-MARTA-0005187).
 [REDACTED]
 [REDACTED]
 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 95:15-23).
 [REDACTED].
Id. at 96:7-9.
 [REDACTED]. *Id.* at
 77:13-16. [REDACTED]

1 [REDACTED]. See Lau Decl., Ex. G (CRT-MARTA-0044008 at CRT-MARTA-0044020,
2 “MARTA Business Plan”). [REDACTED]
3 [REDACTED]. Lau
4 Decl., Ex. E (Dep. Tr. of Aimee Fields at 88:3-10).

5 [REDACTED].
6 Lau Decl., Ex. G (CRT-MARTA-0044008 at CRT-MARTA-0044020, “MARTA Business
7 Plan”). [REDACTED]

8 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert
9 Thompson at 78:18-24). [REDACTED]

10 [REDACTED]
11 [REDACTED]. See *id.* at 187:25-188:3. [REDACTED]
12 [REDACTED].” See *id.* at
13 79:1-2, 81:13-15, 126:15-19.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]. *Id.* at 126:10-15, 131:2-10.

17 [REDACTED]
18 [REDACTED]. *Id.* at 186:11-12.

19 [REDACTED]
20 [REDACTED]. *Id.* at
21 131:11-20. [REDACTED]

22 [REDACTED]
23 [REDACTED]. See *id.* at 131:22-132:5, 132:24-133:8. [REDACTED]

24 [REDACTED]. *Id.* at 133:10-14.

25 [REDACTED]
26 [REDACTED]
27 [REDACTED]. *Id.*

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1 at 91:15-17, 93:8-11. [REDACTED]

2 [REDACTED]
 3 [REDACTED]. *Id.* at 91:2-7, 94:1-
 4 15; Lau Decl., Ex. H (Dep. Tr. of Warren Mann at 122:23-123:9); Lau Decl., Ex. E (Dep. Tr.
 5 of Aimee Fields at 57:18-23). [REDACTED]

6 [REDACTED]
 7 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert
 8 Thompson at 90:4-7).

9 [REDACTED]
 10 [REDACTED]. Lau Decl., Ex. E (Dep. Tr. of Aimee Fields at 155:23-156:12). [REDACTED]

11 [REDACTED]
 12 [REDACTED]. *Compare* Lau Decl., Ex. I (CRT-MARTA-0043860, “Resource Plus Membership
 13 List”) *with* Lau Decl., Ex. J (CRT-MARTA-0043895, “MARTA Common Stock
 14 Reconciliation List”).

15 **IV. STANDARD OF REVIEW**

16 A court “shall” grant summary judgment “if the movant shows that there is no genuine
 17 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
 18 Fed. R. Civ. P. 56(a). “Summary judgment should be granted if the evidence would require a
 19 directed verdict for the moving party.” *Kinetic Systems, Inc. v. Federal Financing Bank*, Case
 20 No. 12-cv-01619-SC, 2014 WL 3964952, at *3 (N.D. Cal. Aug. 13, 2014) (Conti, J.) (citing
 21 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986)). “The mere existence of a
 22 scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be
 23 evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at
 24 252.

1 **V. ARGUMENT**

2 **A. The Motion For Summary Judgment Should Be Granted**
 3 **Because MARTA Lacks Antitrust Standing With Respect To**
 4 **Its Sherman Act Claim**

5 By its First Claim for Relief, MARTA seeks to recover damages for a purported
 6 violation of the Sherman Act. This claim should be dismissed because MARTA is a buying
 7 cooperative that lacks antitrust standing.

8 In relevant part, Section 4 of the Clayton Act provides that “any person who shall be
 9 injured in his business or property by reason of anything forbidden in the antitrust laws may
 10 sue therefor in any district court in the United States in the district in which the defendant
 11 resides or is found or has an agent, without respect to the amount in controversy, and shall
 12 recover threefold the damages by him sustained, and the cost of suit, including a reasonable
 13 attorney’s fee.” 15 U.S.C. § 15(a). Notwithstanding the potentially broad scope of this
 14 provision, numerous courts have concluded that “Congress did not intend the antitrust laws to
 15 provide a remedy in damages for all injuries that might conceivably be traced to an antitrust
 16 violation.” *Associated General Contractors of California v. California State Council of*
 17 *Carpenters*, 459 U.S. 519, 534 (1983) (quoting *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 263
 18 n.14 (1972)) (internal quotation marks omitted). Consequently, the question whether a
 19 plaintiff may recover for the injury it has allegedly suffered by reason of a defendant’s
 20 conduct “requires us to evaluate the plaintiff’s harm, the alleged wrongdoing by the
 21 defendants, and the relationship between them.” *Id.* at 535. Although there is no “black letter
 22 rule” applicable to every case (*id.* at 536), certain factors are considered: “(1) the nature of
 23 the plaintiff’s alleged injury; that is, whether it was the type the antitrust laws were intended
 24 to forestall; (2) the directness of the injury; (3) the speculative measure of the harm; (4) the
 25 risk of duplicative recovery; and (5) the complexity of apportioning damages.” *American Ad*
 26 *Management, Inc. v. General Telephone Co. of California*, 190 F.3d 1051, 1054 (9th Cir.
 27 1999) (citation omitted). “In evaluating standing, courts also consider whether there exists a
 28 more directly injured plaintiff to vindicate the public’s interest.” *Andrx Pharmaceuticals, Inc.*

1 *v. Biovail Corp. Int'l*, 256 F.3d 799, 816 (D.C. Cir. 2001) (citing *Associated General*
 2 *Contractors*, 459 U.S. at 544). Courts “are more likely to find no standing if the plaintiff’s
 3 injury both derives from and is measured by another’s more direct injury.” *Id.* (citation
 4 omitted).

5 Applying these standards, it is apparent that MARTA does not have antitrust standing
 6 to assert a claim under the Sherman Act. According to its own charter, [REDACTED]
 7 [REDACTED]. Lau Decl., Ex. C (CRT-
 8 MARTA-0043944 at CRT-MARTA-0043944, “MARTA Cooperative Plan”). [REDACTED]

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 41:23-25, 42:5-
 12 23); Lau Decl., Ex. D (CRT-MARTA-0000089 at CRT-MARTA-0000096, “MARTA
 13 Audited Financial Statements”). [REDACTED]

14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]. Lau
 21 Decl., Ex. B (Dep. Tr. of Robert Thompson at 84:15-85:1). [REDACTED]

22 [REDACTED]
 23 [REDACTED]. *Id.* at 86:20-24,
 24 87:15-22, 88:7-10. [REDACTED]. *Id.* at 77:13-16. [REDACTED]

1 [REDACTED]. Lau Decl., Ex. E (Dep. Tr. of Aimee
2 Fields at 88:3-10).

3 The relationship between [REDACTED]
4 [REDACTED] was confirmed by MARTA's 30(b)(6) witness, Robert
5 Thompson, who testified as follows:

6 Q. [REDACTED]

11 A. [REDACTED].

12 Q. [REDACTED]

13 A. [REDACTED].

14 Q. [REDACTED]

19 MR. SHAW: [REDACTED].

20 THE WITNESS: [REDACTED]

22 BY MR. LAU:

23 Q. [REDACTED]

27 MR. SHAW: [REDACTED].

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1 MR. DIEL: [REDACTED].

2 THE WITNESS: [REDACTED].

3 Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 131:2-132:5).

4 A plaintiff cannot establish antitrust injury (and, thus, does not have antitrust standing)
5 if that plaintiff actually benefits from the alleged antitrust violation. For example, the
6 plaintiffs in *Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096 (9th Cir. 1999),
7 were lodge operators and lodging referral services in a ski resort area. With respect to alleged
8 price-fixing of ski packages and lodging accommodations, the Ninth Circuit held that the
9 plaintiffs had not alleged antitrust injury because the plaintiffs “are competitors to, rather than
10 customers of, Defendants in the sale of these services.” *Id.* at 1102. In reaching its holding,
11 the Ninth Circuit observed that “Plaintiffs stand to benefit from the fact that prices for those
12 services are inflated.” *Id.* (citation omitted)). MARTA is akin to the plaintiffs in *Big Bear* in
13 that it benefited from any overcharge that occurred because [REDACTED]

14 [REDACTED]. Thus, it suffered no antitrust injury.
15 *Accord American Ad Management*, 190 F.3d at 1056 (“There can be no antitrust injury if the
16 plaintiff stands to gain from the alleged unlawful conduct.”) (citation omitted); *see also*
17 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 584 n.8 (1986) (noting
18 respondents may not complain about conspiracies that “would actually benefit respondents by
19 raising market prices”).

20 MARTA is also like the plaintiff in *Obron v. Union Camp Corp.*, 355 F. Supp. 902
21 (E.D. Mich. 1972). The plaintiff in that case was a “jobber,” or wholesale dealer who
22 purchased mesh window bags from the defendant. The plaintiff alleged that the defendant and
23 others conspired to create a monopoly through the enforcement of invalid patents. The *Obron*
24 Court reviewed the cases that might bear upon the issue before it, including *Hanover Shoe,*
25 *Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), which held that the defendant was
26 not entitled to a pass-on defense, but which noted that such a defense might be available if
27 there were a pre-existing cost-plus contract. *Obron*, 355 F. Supp. at 905-06. Reviewing the

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1 facts before it, the *Obron* Court stated that “[i]t appears to this Court that if there is not a ‘pre-
2 existing cost-plus contract’ present here the situation is so strikingly similarly to such a
3 contract as to dictate the allowance of the ‘passing-defense.’” *Id.* at 906. The *Obron* Court
4 then explained why:

5 The plaintiff, as a matter of fact, did not even see the product since
6 it was shipped directly from Union to plaintiff’s customers. The
7 price plaintiff charged to his customers was the list price set by
8 Union and the arrangement plaintiff had with Union throughout
9 their years of dealing was that Union charged plaintiff 5% less than
10 the list price. Actually, the arrangement more closely approaches a
11 sales commission than a buyer-seller relationship. The only
12 reasonable inference is that the plaintiff himself profited by any
13 increase in prices set by defendant Union.

14 *Id.* These facts led the *Obron* Court to conclude that the plaintiff had not suffered any
15 antitrust injury. *See id.* at 908 (noting that a finding of injury in this case “would subvert the
16 plain language of Section 4 of the Clayton Act which gives a cause of action to ‘any person
17 who shall be injured in his business or property . . .’”). MARTA, of course, is exactly like the
18 plaintiff in *Obron* in all material respects: [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED].

22 The fact that MARTA never suffered any injury is enough to conclude that MARTA
23 lacks antitrust standing. *See American Ad Management, Inc.*, 190 F.3d at 1055 (“the Supreme
24 Court has noted that ‘[a] showing of antitrust injury is necessary, but not always sufficient, to
25 establish standing under § 4.’”) (quoting *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S.
26 104, 110 n.5 (1986)). There are other considerations, however, that support the conclusion
27 that MARTA does not possess antitrust standing. Paramount among these is the fact that
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1 there exists “a more directly injured plaintiff” than MARTA itself. *Andrx*, 256 F.3d at 816. If
 2 there were a conspiracy that resulted in overcharges, such a conspiracy would result in harm
 3 to the membership of MARTA. It was that membership ([REDACTED]) that
 4 purchased the televisions and monitors at inflated prices (if, in fact, the prices were inflated at
 5 all). MARTA serves as a poor proxy for its membership. [REDACTED]

6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]. Thus, allowing MARTA to proceed as a plaintiff in this action could potentially result
 10 in a windfall for companies never harmed by the alleged conspiracy.

11 **B. The Motion For Summary Judgment Should Be Granted**
 12 **Because MARTA Does Not Have Standing With Respect To Its**
 13 **Arizona And Illinois Antitrust Claims**

14 By its Second Claim for Relief, MARTA seeks recovery under the antitrust laws of
 15 Arizona and Illinois. MARTA’s state law claims, however, also fail for lack of antitrust
 16 standing.

17 **1. MARTA Has Not Been “Injured” Within The Meaning Of The**
Arizona Antitrust Act

18 The Arizona Antitrust Act provides that “[a] person . . . injured in his business or
 19 property by a violation of this article may bring an action for . . . damages sustained.” Ariz.
 20 Rev. Stat. § 44-1408(B). The statute contains a clause that provides that courts “may” look to
 21 interpretations of federal courts of comparable federal antitrust statutes to guide their own
 22 interpretations of the Arizona Antitrust Act. *See* Ariz. Rev. Stat. 44-1412 (“It is the intent of
 23 the legislature that in construing this article, the courts may use as a guide interpretations
 24 given by the federal courts to comparable federal antitrust statutes.”). Relying upon the
 25 Supreme Court of Arizona’s decision in *Bunker’s Glass Co. v. Pilkington, PLC*, 206 Ariz. 9
 26 (2002), this Court has already held that “the Arizona Supreme Court would not apply *AGC*.”
 27 *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, Case No. C-07-5944-SC,
 28

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1 2013 WL 4505701, at *9 (N.D. Cal. Aug. 21, 2013). Nonetheless, the Court should still
2 conclude that MARTA does not have standing under the Arizona Antitrust Act.

3 In its decision, the *Bunker's Glass* Court stated that, “[g]enerally, the best indicator of
4 the meaning of a statute is its plain language.” 206 Ariz. at 12 (citation omitted). The
5 Arizona Antitrust Act provides that only a person who has been “injured in his business or
6 property” may bring an action for damages. Ariz. Rev. Stat. § 44-1408(B). As demonstrated
7 above, however, MARTA could not have suffered any injury by reason of any alleged
8 overcharge. Rather, MARTA would have benefited from any overcharge through [REDACTED]
9 [REDACTED]. The fact that MARTA’s members may have suffered an
10 injury does not help MARTA’s standing here. The statute plainly states that a person must
11 suffer injury to “his business or property,” not some other entity’s business or property.

12 Applying the plain meaning rule, MARTA has not been injured within the meaning of
13 the Arizona Antitrust Act and, as a result, does not have standing to bring an action under that
14 Act.

15 **2. MARTA Does Not Satisfy The Standing Requirements Of The** 16 **Illinois Antitrust Act**

17 Previously, this Court stated that it found “no convincing evidence that the Illinois
18 Supreme Court would not apply *AGC*.” 2013 WL 4505701, at *10; *see also O’Regan v.*
19 *Arbitration Forums, Inc.*, 121 F.3d 1060, 1066 (7th Cir. 1977) (federal antitrust standing rules
20 apply under the Illinois Antitrust Act). Given that the federal standing rules apply to
21 MARTA’s claims under the Illinois Antitrust Act, MARTA’s Illinois claims fail for the same
22 reason that its federal claims fail.

23 **C. The Motion For Summary Judgment Should Be Granted** 24 **Because The Customer Control Exception To *Illinois Brick*** 25 **Bars MARTA’s Claims**

26 There is a separate reason why the motion for summary judgment should be granted
27 with respect to MARTA’s federal claim — the customer control exception to *Illinois Brick*
28 bars that claim.

Pursuant the rule announced by the Supreme Court in *Illinois Brick*, indirect purchasers are generally barred from recovering, under the federal antitrust laws, damages for their antitrust injury. *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 735, 745-46 (1977). The Court has recognized a limited number of exceptions to the direct-purchaser rule, including one allowing an indirect purchaser to sue when it “own[s] or control[s]” the direct purchaser, because, under those conditions, “market forces have been superseded.” *Id.* at 736 n.16. The Ninth Circuit elaborated that the indirect purchaser’s owning or controlling the direct purchaser is illustrative of a situation in which “the effect of the overcharge is essentially determined in advance, without reference to the interaction of supply and demand that complicates the determination in the general case,” and the arrangement “circumvent[s] complex market interactions.” *Royal Printing Co. v. Kimberly-Clark Corp.*, 621 F.2d 323, 326 n.4 (9th Cir. 1980) (quoting *Illinois Brick*, 431 U.S. at 736). Put slightly differently, the ownership or control exception “encompass[es] relationships involving such functional economic or other unity between the direct purchaser and either the defendant or the indirect purchaser, that there effectively has been only one sale.” *Sun Microsystems, Inc. v. Hynix Semiconductor Inc.*, 608 F. Supp. 2d 1166, 1180 (N.D. Cal. 2009). Where the indirect purchaser is the owning or controlling party, the exception describes a circumstance “where an indirect purchaser is clearly the party sustaining the injury caused by the fixing of prices.” *Burkhalter Travel Agency v. MacFarms Int’l, Inc.*, 141 F.R.D. 144, 148 (N.D. Cal. 1991). Critically, “[o]nly one purchaser of any specific good whose price has allegedly been fixed may state a claim for damages under the Clayton Antitrust Act” *Id.* at 151 (holding that only the indirect purchaser, not the direct purchaser, had standing to pursue a Sherman Act claim).

The Ninth Circuit has defined “control” to mean “to exercise restraint or direction over; dominate, regulate, or command,” or “to have the power or authority to guide or manage.” *In re ATM Fee Antitrust Litig.*, 686 F.3d 741, 757 (9th Cir. 2012). The Northern District has described “ownership of a majority of the [allegedly controlled party’s] common stock,” “interlocking directorates, minority stock ownership, loan agreements . . . , [or] trust

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1 agreements” as “examples of the types of facts that would satisfy the control exception.” *Sun*
 2 *Microsystems*, 608 F. Supp. 2d at 1180.

3 1. MARTA Was Owned And Controlled By Its Members

4 By any measure, MARTA fits comfortably in the ownership or control exception.
 5 [REDACTED]. Lau
 6 Decl., Ex. B (Dep. Tr. of Robert Thompson at 39:8-11). The members’ control permeated
 7 every aspect of MARTA’s operations. [REDACTED]

8 [REDACTED]. *Id.* at 40:2-3, 48:9-23.

9 [REDACTED]. *Id.* at 49:8-15. [REDACTED]

10 [REDACTED]
 11 [REDACTED] (*id.* at 58:25-59:3), [REDACTED]

12 [REDACTED]. Lau Decl., Ex. A (CRT-
 13 MARTA-0043911 at CRT-MARTA-0043929, “MARTA Overview”). [REDACTED]

14 [REDACTED]
 15 [REDACTED] (Lau Decl., Ex. B (Dep. Tr.
 16 of Robert Thompson at 54:3-11)), [REDACTED] (*id.* at 58:21-24 (“Q.

17 [REDACTED]
 18 [REDACTED] A. [REDACTED].”)).

19 Through their [REDACTED]
 20 [REDACTED], MARTA’s members
 21 “dominate[d], regulate[d], [and] command[ed]” the cooperative, and had “the power or
 22 authority to guide or manage” the group. *In re ATM Fee Antitrust Litig.*, 686 F.3d 741, 757
 23 (9th Cir. 2012). Those factors also set the instant situation apart from the cases in which
 24 courts in the Ninth Circuit have ruled against the applicability of the ownership or control
 25 exception. *See, e.g., id.* at 757-58 (finding no ownership or control where the banks owned
 26 merely ten percent of the publicly held corporation that in turn owned the ATM network, and
 27 did not control the intermediary corporation’s board of directors); *Sun Microsystems*, 608 F.
 28

1 Supp. 2d at 1180-1182 (finding the ownership or control exception inapplicable because the
2 indirect purchaser failed to show it had structural control — such as interlocking directorates
3 or officers, stock ownership, or loan or trust agreements — over the direct purchasers, or that
4 the latter were its purchasing agents).

5 Being a [REDACTED]
6 [REDACTED] (Lau Decl., Ex. A
7 (CRT-MARTA-0043911 at CRT-MARTA-0043913, “MARTA Overview”), the economic
8 unity between MARTA and its member shareholders is undeniable. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 [REDACTED]. It is little wonder that MARTA itself proclaimed that
13 “[REDACTED]” *Id.* at CRT-MARTA-0043936. The unity in interest between
14 MARTA and its members was such that, when merchandise flowed from the vendors to
15 MARTA’s member dealers through MARTA, “there effectively has been only one sale.” *Sun*
16 *Microsystems*, 608 F. Supp. 2d at 1180.

17 Because [REDACTED]
18 [REDACTED] (Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at
19 131:11-132:5, 132:24-133:8)), “the effect of the overcharge is essentially determined in
20 advance, without reference to the interaction of supply and demand that complicates the
21 determination in the general case.” *Royal Printing*, 621 F.2d at 326 n.4. Thus, in MARTA’s
22 transactions with its member shareholders, “market forces have been superseded.” *Illinois*
23 *Brick*, 431 U.S. at 736 n.16. To the extent that MARTA absorbed any cost increase for its
24 members in order to maintain the price competitiveness of select core models, it did so as an
25 agent of, and on behalf of, its members. *See* Lau Decl., Ex. H (Dep. Tr. of Warren Mann at
26 94:11-23) (explaining, when asked whether it was MARTA or the members who absorbed the
27 cost increases for core models, “I don’t think there was anything that MARTA did that
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1 MARTA's members didn't do . . . Any money that I spent, I spent on behalf of all the
2 members.”).

3 2. MARTA Was A Purchasing Agent For Its Members

4 Courts have recognized that, “where a particular industry structure includes a
5 principal-agent relationship between the indirect and direct purchasers such that the two are
6 not distinct economic entities in the purchase chain, the indirect purchaser has standing under
7 *Illinois Brick*.” *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 505 (S.D.N.Y.
8 1996); *see also In re TFT-LCD (Flat Panel) Antitrust Litig.*, Nos. M 07-1827 SI, 2011 WL
9 3738968, at *2-3 (N.D. Cal. Aug. 24, 2011) (recognizing that entities on whose behalf
10 purchasing entities made purchases from the defendants may sue under *Illinois Brick*'s control
11 exception); *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 25 (D.D.C. 2001)
12 (finding that plaintiff hospitals have made a sufficient showing of standing where they show
13 that they are members and owners of a group purchasing organization which purchased as
14 their agent the allegedly price-fixed products from the defendants); *In re NASDAQ*, 169
15 F.R.D. at 506 (recognizing the standing of indirect purchasers who “transacted through non-
16 Defendant owned brokers where those brokers did not function as a distinct economic entity
17 in the chain of purchase or sale”). In *In re Toilet Seat Antitrust Litig.*, the court interpreted the
18 relationship between the indirect purchaser and the direct purchaser “as that of principal and
19 agent rather than buyer and seller,” and determined that the ownership or control exception
20 therefore applied. *In re Toilet Seat Antitrust Litig.*, No. 75-184, 1977 WL 1453, at *2 (E.D.
21 Mich. Aug. 24, 1977). In that case, the direct purchaser was a purchasing concern which
22 purchased for the indirect purchaser at a price approved by the indirect purchaser for a flat
23 monthly fee, and which kept no inventory. *Id.* In some instances, the direct purchaser would
24 be billed first for the purchases and, in turn, would bill the indirect purchaser. *Id.*

25 This case calls for the same conclusion. MARTA defined itself in its charter as a
26 [REDACTED]. Lau Decl., Ex. C (CRT-MARTA-0043944 at CRT-
27 MARTA-0043944, “MARTA Cooperative Plan”). As such, [REDACTED]
28

1 [REDACTED] (Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 41:23-25)), [REDACTED]
 2 [REDACTED].
 3 See, e.g., Lau Decl., Ex. A (CRT-MARTA-0043911 at CRT-MARTA-0043929, “MARTA
 4 Overview”); Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 54:3-11, 58:21-24). In the
 5 individual transactions, too, [REDACTED]
 6 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 67:13-68:21,
 7 69:9-12, 69:20-70:10). [REDACTED]
 8 [REDACTED]. *Id.* at
 9 91:2-7, 94:1-15; Lau Decl., Ex. H (Dep. Tr. of Warren Mann at 122:23-123:9); Lau Decl., Ex.
 10 E (Dep. Tr. of Aimee Fields at 57:18-23). [REDACTED]
 11 [REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 91:15-17, 93:8-11). As
 12 an entity which was [REDACTED] (*id.* at 39:8-11), whose purpose was
 13 [REDACTED] (*id.* at 46:16-18), and which [REDACTED]
 14 [REDACTED] (*id.* at 131:11-132:5, 132:24-133:8), MARTA did not function as a
 15 distinct entity in the chain of distribution.

16 3. The Court Should Not Follow The Court’s Decision In 17 TFT-LCD

18 In the *TFT-LCD* case, the defendants filed a motion for summary judgment in which
 19 they argued (as we argue here), that MARTA lacks standing based upon the customer control
 20 exception to *Illinois Brick*. On September 4, 2014, the *TFT-LCD* Court denied this motion.
 21 *In re: TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827 (N.D. Cal.
 22 Sept. 4, 2014) (“*TFT-LCD* Order”) (order denying defendants’ motion for summary judgment
 23 on Plaintiff MARTA’s lack of standing under *Illinois Brick*). In this order, the *TFT-LCD*
 24 Court stated that it was “satisfied that MARTA’s members did not exercise such control over
 25 it that the exception to *Illinois Brick* should apply to them.” *TFT-LCD* Order at 5. For the
 26 following reasons, we believe that the *TFT-LCD* Court erred in reaching this conclusion.

27 Citing to *In re ATM Fee Antitrust Litigation*, 686 F.3d 741, 757 (9th Cir. 2012), the
 28 *TFT-LCD* Court stated that, “[a]lthough each of MARTA’s members owned stock in the

entity, the individual amounts that each member owned were *de minimis*, worth a mere \$4,000.” *TFT-LCD* Order at 5. This observation, however, ignores the fact that [REDACTED]. The fact that the value of each share was relatively small does not change this fact. The facts of *ATM Fee* do not support the *TFT-LCD* Court’s reasoning. The Bank Defendants in that case had a “small ownership percentage” of Concord, which itself had a “widely dispersed” ownership. *ATM Fee*, 686 F.3d at 757. These facts lead the *ATM Fee* Court to conclude that “Bank Defendants had insufficient ownership interests to control Concord and thus STAR.” *Id.* In contrast, because the MARTA members [REDACTED], they collectively had the ability to control MARTA.

The *TFT-LCD* Court also stated that “MARTA’s members participated in committees that then made suggestions to the Executive Director, but it was the Executive Director who ultimately negotiated for the programs.” *TFT-LCD* Order at 5. In this case, however,

[REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 57:20-24, 58:21-59:3).

[REDACTED]. *Id.* at 67:9-12.

According to the *TFT-LCD* Court, “MARTA independently calculated and set the resale price.” *TFT-LCD* Order at 5. In this case, however,

[REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 126:10-15, 131:2-132:5, 132:24-133:14).

According to the *TFT-LCD* Court, “MARTA was run not by its members, but by its Board of Directors.” *TFT-LCD* Order at 5. [REDACTED]

[REDACTED]. Lau Decl., Ex. B (Dep. Tr. of Robert Thompson at 40:2-3, 48:9-23).

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1 Examining the undisputed facts of this case, the Court should conclude that MARTA's
 2 members both owned and controlled MARTA. In the event that the Court is inclined to
 3 follow the *TFT-LCD* Order, we note that the *TFT-LCD* Order only addressed application of
 4 the customer control exception to *Illinois Brick*. That order did not address the standing
 5 arguments addressed in Sections V.A and V.B of this motion.

6 **VI. CONCLUSION**

7 For these reasons, the Court should grant this motion and dismiss MARTA's
 8 complaint in its entirety.

10 Respectfully submitted,

11 Dated: November 7, 2014

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DEFENDANTS' NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

Case No. 07-5944 SC

MDL No. 1917

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DEFENDANTS' NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

Case No. 07-5944 SC

MDL No. 1917

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Technicolor SA, et al.*

DEFENDANTS' NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

Case No. 07-5944 SC

MDL No. 1917

CERTIFICATE OF SERVICE

On November 7, 2014, I caused a copy of the “DEFENDANTS’ JOINT MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

By: /s/ Lucius B. Lau
Lucius B. Lau (*pro hac vice*)

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

*P.C. Richard & Son Long Island Corp., et al. v.
Hitachi, Ltd., et al.*, No. 12-cv-02648;

*P.C. Richard & Son Long Island Corp., et al. v.
Technicolor SA, et al.*, No. 13-cv-05725.

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT WITH
RESPECT TO MARTA**

**[PROPOSED] ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA**
Case No. 07-5944-SC
MDL No. 1917

1 Upon consideration of Defendants' Motion for Summary Judgment With Respect to
2 MARTA and any responses and replies thereto, it is hereby:

3 ORDERED that the motion is GRANTED; and it is further

4 ORDERED that MARTA Cooperative of America, Inc.'s First Amended Complaint
5 is dismissed with prejudice.

6
7 **IT IS SO ORDERED.**

8
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10 Dated: _____

11 HONORABLE SAMUEL CONTI
12 UNITED STATES DISTRICT JUDGE
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12 *Counsel to Defendants Toshiba Corporation,*

13 *Toshiba America, Inc., Toshiba America Consumer Products, LLC, Toshiba America*

14 *Information Systems, Inc., and Toshiba America Electronic Components, Inc.*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 (SAN FRANCISCO DIVISION)

18 IN RE: CATHODE RAY TUBE (CRT)
19 ANTITRUST LITIGATION

20 Case No. 07-5944 SC
21 MDL No. 1917

22 This Document Relates To:

23 *P.C. Richard & Son Long Island Corp., et al.*
24 *v. Hitachi, Ltd., et al.*, No. 12-cv-02648;

25 *P.C. Richard & Son Long Island Corp., et al.*
26 *v. Technicolor SA, et al.*, No. 13-cv-05725.

27 **DECLARATION OF**
28 **LUCIUS B. LAU IN SUPPORT OF**
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT WITH
RESPECT TO MARTA

DECLARATION OF LUCIUS B. LAU IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MARTA

Case No. 07-5944-SC
MDL No. 1917

1 I, Lucius B. Lau, hereby declare as follows:

2 1. I am an attorney with the law firm of White & Case LLP, counsel for
3 Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Consumer
4 Products, LLC, Toshiba America Information Systems, Inc., and Toshiba America Electronic
5 Components, Inc.

6 2. I submit this declaration in support of the Defendants' Motion For Summary
7 Judgment With Respect to MARTA, filed contemporaneously herewith. I have personal
8 knowledge of the facts stated herein, and I could and would competently testify thereto if
9 called as a witness.

10 3. Attached hereto as Exhibit A is a true and correct copy of a document
11 produced by MARTA, bearing the bates numbers CRT-MARTA-0043911 through CRT-
12 MARTA-0043943 ("MARTA Overview").

13 4. Attached hereto as Exhibit B is a true and correct copy of excerpts from the
14 Deposition Transcript of Robert Thompson, dated February 14, 2014.

15 5. Attached hereto as Exhibit C is a true and correct copy of a document
16 produced by MARTA, bearing the bates numbers CRT-MARTA-0043944 through CRT-
17 MARTA-0044004 ("MARTA Cooperative Plan").

18 6. Attached hereto as Exhibit D is a true and correct copy of a document
19 produced by MARTA, bearing the bates numbers CRT-MARTA-0000089 through CRT-
20 MARTA-0000101 ("MARTA Audited Financial Statements").

21 7. Attached hereto as Exhibit E is a true and correct copy of excerpts from the
22 Deposition Transcript of Aimee Fields, dated June 4, 2014.

23 8. Attached hereto as Exhibit F is a true and correct copy of a document
24 produced by MARTA, bearing the bates numbers CRT-MARTA-0005185 through CRT-
25 MARTA-0005189.

26 9. Attached hereto as Exhibit G is a true and correct copy of a document
27 produced by MARTA, bearing the bates numbers CRT-MARTA-0044008 through CRT-
28 MARTA-0044042 ("MARTA Business Plan").

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

1 10. Attached hereto as Exhibit H is a true and correct copy of excerpts from the
2 Deposition Transcript of Warren Mann, dated July 25, 2014.

3 11. Attached hereto as Exhibit I is a true and correct copy of a document produced
4 by MARTA, bearing the bates numbers CRT-MARTA-0043860 through CRT-MARTA-
5 0043861 (“Resource Plus Membership List”).

6 12. Attached hereto as Exhibit J is a true and correct copy of a document
7 produced by MARTA, bearing the bates numbers CRT-MARTA-0043895 through CRT-
8 MARTA-0043897 (“MARTA Common Stock Reconciliation List”).

9
10 I declare under penalty of perjury under the laws of the United States of America that
11 the foregoing is true and correct.

12
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14 Executed this 7th day of November, 2014, in Washington, D.C.

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Lucius B. Lau

EXHIBIT A

Filed Under Seal

EXHIBIT B

Filed Under Seal

EXHIBIT C

Filed Under Seal

EXHIBIT D

Filed Under Seal

EXHIBIT E

Filed Under Seal

EXHIBIT F

Filed Under Seal

EXHIBIT G

Filed Under Seal

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

-----x

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

No.: 3:07-cv-05944 SC--MDL No. 1917
Individual Action No.: 3:11-cv-05514

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FRIDAY, JULY 25, 2014

9:08 a.m.

Video Deposition of WARREN MANN, III, held
at the offices of WHITE & CASE, LLP, 1155
Avenue of the Americas, New York, New York
10036, before Suzanne J. Stotz, a Certified
Court Reporter, and a Notary Public of the
State of New York.

11:12 1 then you've got to sell it to him at 280 to go
11:12 2 399.99. You don't want it to be 409. And if
11:12 3 the manufacturer has a \$5 price increase,
11:12 4 you're either going to shorten their margin or
11:12 5 you're going to lose the price point.

11:12 6 But we had a third option. And the
11:12 7 third option was you know what, we'll raise the
11:12 8 price a dollar on six other items, but we'll
11:12 9 hold this critical price point because it's an
11:12 10 important part of our business.

11:12 11 Q. You're making reference to the
11:12 12 so-called core models; is that correct?

11:12 13 A. Yes.

11:12 14 Q. Okay. When you talked about
11:12 15 absorbing the cost, would that be something
11:12 16 that MARTA would do or MARTA's members would
11:12 17 do?

11:12 18 A. I don't think there was anything
11:12 19 that MARTA did that MARTA's members didn't do.
11:12 20 MARTA was still a cooperative. We were a
11:13 21 not-for-profit organization owned by the
11:13 22 members. Any money that I spent, I spent on
11:13 23 behalf of all the members.

11:13 24 By the way, a good reason to have a
11:13 25 committee because at least I could say, the

12:00 1 And except for a brief period, we
12:00 2 didn't even have a warehouse. Our job was to
12:00 3 help the members get better pricing, net
12:00 4 pricing, programs, sometimes other advantages
12:00 5 like availability, because we operated as an
12:00 6 entity.

12:00 7 At one time MARTA was the second
12:00 8 largest Toshiba dealer in the country, best by
12:00 9 being the largest; but that was only made
12:00 10 possible because of the way we had to do the
12:01 11 billing. Had the members purchased on their
12:01 12 own, they would have been all splintered out;
12:01 13 and I don't think the largest MARTA member
12:01 14 would have been in the top 50 Toshiba.

12:01 15 Q. You said that except for a brief
12:01 16 period MARTA had no warehouses. During what
12:01 17 period did MARTA have a warehouse?

12:01 18 A. I don't know when it started; but
12:01 19 when I was brought in, they had a warehouse in
12:01 20 Chicago.

12:01 21 Q. And what was the purpose of that
12:01 22 Chicago warehouse?

12:01 23 A. I speak now only from my
12:01 24 understanding of what was explained to me. So,
12:01 25 you know, I didn't make the decision. But it's

12:01 1 often thought that if you have a place to
12:01 2 source stuff, you can make a great buy and
12:01 3 bring it even if you don't have somebody
12:01 4 willing to take it.

12:01 5 If I can move 2000 of these
12:01 6 tomorrow, well, it will take my a while to get
12:01 7 orders. I don't have a while. Buy them now or
12:02 8 I'll sell them someplace else. Oh, bring them
12:02 9 in the warehouse. We'll sell them. The
12:02 10 trouble is it's too volatile a business, and it
12:02 11 would be a good buy at the time. Then you find
12:02 12 out that the reason it was a good buy was there
12:02 13 was something better in the wings, and now
12:02 14 you're stuck with the product.

12:02 15 And when I came to the company,
12:02 16 there was inventory that had been lingering in
12:02 17 that warehouse for a while. So we liquidated
12:02 18 it and shut down and eliminated the overhead.

12:02 19 Q. When was the warehouse shut down?

12:02 20 A. I'm going to guess within a year of
12:02 21 my arrival, so maybe the middle of 2000.

12:02 22 MR. LAU: Mr. Mann, thank you for
12:02 23 your time today. I have no further
12:02 24 questions.

12:02 25 I believe we have one defense

EXHIBIT I

Filed Under Seal

EXHIBIT J

Filed Under Seal